RECENT IMPORTANT DECISIONS

BANKRUPTCY—APPOINTMENT OF RECEIVER AS ACT OF BANKRUPTCY.—An insolvent corporation, against which a creditors' suit was brought in the state court, procured the appointment of a receiver therein by an answer and cross bill in the name of its president, who was a defendant, and who with one other stockholder owned the majority of the stock and controlled the corporation. *Held,* that the corporation applied for the appointment of a receiver within the meaning of §3a(4) of the BANKRUPTCY ACT, making such application, while insolvent, an act of bankruptcy; it being unnecessary that the application be by a bill or cross bill filed in the name of the corporation. *Graham Mfg. Co.* v. *Davy-Pocahontas Coal Co.,* 238 Fed. 488.

Though the debtor himself must make application, in case of corporations it is not always requisite that there be a formal declaration by the corporation, if the application for a receiver is substantially the act of the corporation; where those so applying control the corporation and especially where there is an attempt to evade the bankruptcy law, *Exploration Co.* v. *Pacific Co.,* 177 Fed. 825, 839, 101 C. C. A. 39; *James Supply and Hdwe. Co.* v. *Dayton Coal & Iron Co.,* 223 Fed. 991, 139 C. C. A. 367; *In re Maplecroft Mills,* 218 Fed. 659, 673; *Doyle-Kidd Dry Goods Co.* v. *Sadler Lusk Trading Co.,* 206 Fed. 813, even though the laws of the state court do not authorize such application, *Exploration Co.* v. *Pacific Co.,* supra. It is immaterial that receivership was not ordered because of insolvency if the corporation was actually insolvent. *James Hdw. Co.* v. *Dayton Coal & Iron Co.,* supra; *Hill* v. *Electric Co.,* 214 Fed. 243, 130 C. C. A. 613.

BANKRUPTCY—STATUTORY LIABILITY OF SHAREHOLDER AS PROVABLE DEBT.—A discharge in bankruptcy was pleaded as a defense to a suit against the shareholders of an insolvent corporation under a New York statute making them "individually responsible, equally and ratably, for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." Under §63 of the BANKRUPTCY ACT debts founded upon a contract, expressed or implied, are provable in bankruptcy. §14 provides for the discharge of provable debts. *Held,* that the liability was contractual, provable, and the discharge was a good defense. *Van Tuyl* v. *Schwab, et al.,* 164 N. Y. Supp —.

Under most statutes such liability is held to arise out of an implied contract and to accrue before the corporation becomes insolvent. *Platt* v. *Wilmot,* 193 U. S. 613, 24 Sup. Ct. 542, 48 L. ed. 809; *Whitman* v. *Oxford National Bank,* 176 U. S. 559; *Nimick* v. *Mingo Iron Wks. Co.,* 25 W. Va., 184; *Flash* v. *Conn,* 109 U. S. 371, 27 L. ed. 961. In many cases, however, the statutory liability is made a penalty for some misdeed, e. g., failure by the president or corporation to file a certificate showing amount of stock paid in. *Woods* v. *Wicks,* 7 Lea. 40; *Sayles* v. *Brown,* 40 Fed. 8. However, *Marshall* v. *Sherman,* 148 N. Y. 9, 42 N. E. 419, 34 L. R. A. 757, 51 Am. St. Rep. 654,